# Extraterritorial Application of U.S. Law–Two Recent Developments

This past week has seen two interesting developments in cases regarding the extraterritorial application of U.S. law. First, as detailed here, District Court Judge Donneta Ambrose rejected Alcoa's claims that a recent civil RICO suit should be dismissed under Rule 12(b)(6) because it amounted to the inappropriate extraterritorial application of U.S. RICO law. As Judge Ambrose's decision recognizes, it is one of many recent decisions regarding the extraterritorial application of RICO. Recent decisions confirm that the Morrison decision, see here, applies to RICO. The question is whether on the facts of a given case the plaintiffs are seeking an extraterritorial application of the RICO statute or merely seeking civil liability for what amounts to domestic conduct. District Courts appear to be divided on the appropriate analysis. Some courts focus on whether the enterprise is foreign or domestic (as does Judge Ambrose) and other courts focus on whether the location of the alleged racketeering activity is in the United States. Put a slightly different way, district courts seem to be conducting a version of a conducts (enterprise) and effects (location of racketeering activity) test–a test which was rejected in the securities context in Morrison. Given the differing rationales, appellate review certainly seems warranted.

The second development is the continuing saga of Kiobel, which has previously bee highlighted on this blog. Petitioners/Plaintiffs have now filed their supplemental briefing arguing that the Alien Tort Statute applies, at least in some circumstances, to conduct occuring in a foreign sovereign's territory. Further briefing by Respondent/Defendant is expected by August 1.